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Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

DAVID ALLEN LYNN
40023 High Street
Cherry Valley, CA 92223

Respondent.

Case No. 1H-2008-018

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Stephanie Nunez (Complainant) is the Executive Officer of the
Respiratory Care Board of California. She brought this action solely in her official capacity and
is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of
California, by Douglas Lee, Deputy Attorney General.

2. DAVID ALLEN LYNN (Respondent) is representing himself in this
proceeding and has chosen not to exercise his right to be represented by counsel.

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3. On or about January 7, 2008, Respondent filed an application dated January 1, 2008, with the Respiratory Care Board to obtain a Respiratory Care Practitioner License. The Board denied the application on May 27, 2008. On or about May 31, 2008, Respondent requested a hearing to contest the denial of his application for licensure.

JURISDICTION

4. Statement of Issues No. 1H-2008-018 was filed before the Respiratory Care Board (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on or about July 15, 2008. A copy of Statement of Issues No. 1H-2008-018 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 1H-2008-018. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 1H-2008-018.

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9. Respondent agrees that his Respiratory Care Practitioner License is subject to denial and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1. WORK SCHEDULES If specifically requested in writing by the Probation Monitor, Respondent shall submit to the Probation Monitor work schedule(s).

2. BIOLOGICAL FLUID TESTING Respondent shall participate in random testing, including, but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

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1 3. ABSTENTION FROM USE OF ANY AND ALL MOOD ALTERING
2 SUBSTANCES Respondent shall completely abstain from the possession or use of alcohol,
3 controlled substances, dangerous drugs, and any and all other mood altering drugs, substances
4 and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed
5 practitioner as part of a documented medical treatment.

6 Respondent shall execute a release authorizing the release of pharmacy and
7 prescribing records as well as physical and mental health medical records. Respondent shall also
8 provide information of treating physicians, counselors or any other treating professionals as
9 requested by the Board.

10 Respondent shall ensure that he is not in the presence of or in the same physical
11 location as individuals who are using illegal substances, even if Respondent is not personally
12 ingesting the drug(s).

13 Any positive result that registers over the established laboratory cutoff level shall
14 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
15 to revoke probation against Respondent's respiratory care practitioner license.

16 Respondent also understands and agrees that any positive result that registers over
17 the established laboratory cutoff level shall be reported to each of Respondent's employers.

18 4. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
19 state, or local. Respondent shall also obey all regulations governing the practice of respiratory
20 care in California.

21 Respondent shall notify the Board in writing within 14 days of any incident
22 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

23 5. QUARTERLY REPORTS Respondent shall file quarterly reports of
24 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned
25 by the Board. Omission or falsification in any manner of any information on these reports shall
26 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
27 to revoke probation against Respondent's respiratory care practitioner license.

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Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

6. PROBATION MONITORING PROGRAM Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's Probation Program at any time he has a question or concern regarding his terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

7. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes, but is not limited to, applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his physical residence address as well.

8. SURRENDER OF LICENSE Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, he may request the voluntary surrender of his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer practice respiratory care. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a respiratory care license, the application shall be treated as a petition for reinstatement of a revoked license.

9. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period, but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

10. VALID LICENSE STATUS Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet Continuing Education requirements prior to his license expiration date shall constitute a violation of probation.

11. VIOLATION OF PROBATION If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be

1 heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to
2 revoke probation is filed against Respondent during probation, the Board shall have continuing
3 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
4 modification of penalty shall be considered while there is an accusation or petition to revoke
5 probation or other penalty pending against Respondent.

6 12. COMPLETION OF PROBATION Upon successful completion of
7 probation, Respondent's license shall be fully restored.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.
DATED: July 27, 2008.

Original signed by: _____
DAVID ALLEN LYNN
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.
DATED: July 30, 2008

EDMUND G. BROWN JR., Attorney General
of the State of California

STEVEN V. ADLER
Supervising Deputy Attorney General

Original signed by: _____
DOUGLAS LEE
Deputy Attorney General
Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

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Respondent.

Case No. 1H-2008-018

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DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 25, 2008.

It is so ORDERED September 11, 2008.

Original signed by: _____

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA